

By amendments effective July 1, 1993, any party requesting a preliminary hearing must attach thereto “. . . copies of medical reports or other evidence which the party

intends to produce as exhibits supporting the change of benefits . . ." K.S.A 44-534a. Respondent argues that the legislature intended to prohibit the introduction into evidence of any medical reports not attached to the application of preliminary hearing or exchanged at time of benefit review conference. Respondent also argues that if a party is allowed to introduce additional records at the time of the preliminary hearing, no party will be forthcoming with their evidence.

The Appeals Board concludes the cited statute was not intended as an absolute bar to the admission of records not attached to the application or exchanged at benefit review. Had the legislature intended an absolute exclusion of such records from evidence, additional language could have easily so indicated. On the other hand, the legislature clearly did intend for the parties to provide medical records to the opposing party. The Administrative Law Judge certainly would have the authority to enforce that intention by excluding records. The Administrative Law Judge, likewise, has the authority to admit the records where factors favoring admission of the records outweigh the policy of prior disclosure. Because the Administrative Law Judge has this discretion, the decision in this case does not exceed the Administrative Law Judge's jurisdiction.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order issued by Administrative Law Judge James R. Ward dated June 27, 1995, remains in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: George H. Pearson, Topeka, Kansas
Kip A. Kubin, Overland Park, Kansas
Derek Shafer, Topeka, Kansas
James R. Ward, Administrative Law Judge
Philip S. Harness, Director